

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Respondent

against

**AFFIRMATION IN SUPPORT
OF PETITION**

Case: 08-CR-00709 (DLC)

MARTIN SMELING NUNEZ,

Defendant-Petitioner

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COUNTY OF QUEENS)

STATE OF NEW YORK)

EDWARD ZALOB, Esq., being an attorney duly admitted to practice before the Courts of the Southern District of New York affirms, under penalty of perjury, as follows:


1. I am counsel on the above entitled matter and am fully aware of the facts and circumstances of this matter.
2. I make this affirmation in support of Martin Nunez 's Petition for a Writ of Error Coram Nobis and as a supplement to petitioner's affidavit filed herewith as Exhibit A.
3. I make this affirmation upon personal knowledge except where designated that the allegation is upon information and belief. The sources of belief are conversation with Martin S. Nunez, Thomas Barra, Esq., and papers in my file.
4. I have spoken to Tom Barra, Esq., who was the attorney representing Mr. Nunez in the denaturalization action pending in the Eastern District of New York, Docket No.16 CV 3485. Your affirmant took over the denaturalization case on September 11, 2019 prior to that Mr. Barra had become employed with Legal Aid as a criminal attorney and could not continue to represent Mr. Nunez.
5. Mr. Barra has advised me that Mr. Nunez hired him in October of 2017 concerning an action for denaturalization in the Eastern District of New York.

6. Mr. Barra was granted an extension to answer and then the government filed motion for summary judgment on the pleading. Mr. Barra states that in this motion took considerable time to be resolved.
7. The motion for judgment on the pleading was denied by Judge Block and the matter is proceeding.
8. I met with Mr. Nunez on September 10, 2019. There was a Status Conference scheduled for September 12, 2019. Mr. Barra and Nunez were to appear. Mr. Barra had not appeared in July 2019 on a scheduled date and failed to notify his client to appear as well. Your affiant appeared at the conference before Judge Scanlon. At the conference, I notified the Court that the Petitioner would seek to vacate defendant's plea and would be requesting a stay on said denaturalization matter. Upon conferencing with Mr. Barra, it was clear he neither knew that the plea should be vacated nor what a Writ of Error Coram Nobis was. I informed Mr. Nunez the following weekend that his plea must be vacated.
9. Your affiant did conference with defendant's criminal attorney, John Garzon, and he stated he had no memory or recollection of the matter except that the case involved drugs.
10. The statement of facts set forth in the accompanying memorandum of law is adapted from Nunez's supporting affidavit (Exhibit A) and Barra's Affirmation (Exhibit G)
11. For the reasons set forth in the supporting documents annexed hereto and those set forth in the memorandum of law accompanying the Petition, the Petition should be granted.

WHEREFORE, it is respectfully requested that the relief sought by the Petitioner be granted and for such other and further relief which to the Court seems just and proper.

Dated: October 23, 2019
Queens, New York

Respectfully Submitted,


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